

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

Crl.MC.No. 2821 of 2007()

CP.60/2007 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVOOR

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PETITIONER: ACCUSED NO.3:

SIVAN PILLAI, AGED 49 YEARS,
S/O. BHASKARAN PILLAI (LATE), CHARUVILA PUTHENVEEDU
PARAKULAM, NEDUNGOLAM P.O., PARAVOOR, KOLLAM DIST.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY SUB INSPECTOR OF POLICE,
PARAVOOR POLICE STATION, KOLLAM DISTRICT,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J
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Crl.M.C.No.2821 of 2007
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Dated this the 12th day of September, 2007

ORDER

The petitioner has been arrayed as 3rd accused in a prosecution under the provisions of the Kerala Abkari Act. In the FIR registered, the licencees are shown as accused Nos. 1 and 2 and the person who ran away from the premise of the licenced toddy shop is arrayed as 3rd accused. The petitioner has not entered appearance so far. He has not been arrested so far, either at the crime stage or later, submits the learned counsel for the petitioner. Consequent to non-appearance of the petitioner after taking of cognizance, in the committal proceedings, warrant of arrest has been issued against the petitioner. The petitioner has come before this at this juncture with a prayer that proceedings against him may be quashed.

3. The contention of the petitioner is that there is nothing to show that the petitioner was the one who allegedly ran away from the toddy shop. I am of the opinion that the petitioner must raise his contention before the appropriate court at the stage of discharge or trial. I find no reason to embark on a detailed enquiry now as to whether the petitioner was the one who allegedly ran away from the

scene of the crime. The petitioner must appear before the courts below and raise such contention at the appropriate stage. I am not satisfied that powers under Sec.482 Cr.P.C in this case at this stage can be invoked. The petitioner then submits that he is willing to surrender before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He hence prays that appropriate directions under Section 482 Cr.P.C may be issued in favour of the petitioner.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior

notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

5. Such application shall be considered in the light of the decision in **Sukumari v. State of Kerala (2001 (1) KLT 22)**.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE